IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17052 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ZALA KALUSINH PARBATSINH
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR PS CHAMPANERI for the Petitioner.
MR DA DESAI, AGP for Respondent No.1.
MR SK PATEL for Respondent No.2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 29/09/2005

ORAL JUDGMENT

1. Rule. Shri Dipan Desai, learned AGP, waives service of rule on behalf of respondent no.1. Shri S.K. Patel, learned advocate waives service of rule on behalf of

respondent no.2. Nobody has appeared on behalf of respondent no.3.

With the consent of the parties, matter is taken up for final hearing today.

2. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Deputy Secretary (Appeals), Agriculture and Cooperation Department dated 22-7-2004 in Revision Application No.91 of 2004, exercising the powers under Section 48 of the Gujarat Agriculture Produce Market Act, 1963.

3. It appears from the record that by resolution No.19(2) of the APMC, Talod dated 30th August, 1999, the plot in question was leased to the petitioner, which came to be challenged by the respondent no.3 herein by filing a Revision Application under Section 48 of the Gujarat Agriculture Produce Market Act, 1963 and the Deputy Secretary (Appeals), Agriculture and Cooperation Department by his judgment and order dated 22-7-2004 allowed the said Revision Application by quashing and setting aside the resolution No.19(2) of the APMC, Talod dated 30th August, 1999.

Being aggrieved by and dissatisfied with the same, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

4. Shri P.S. Champaneri, learned advocate appearing on behalf of the petitioner has submitted that the impugned order has been passed by the Deputy Secretary(Appeals) without giving an opportunity of being heard to the petitioner and in fact, the petitioner was not even joined as a party to the said Revision Application, though the petitioner is a beneficiary of the resolution No.19(2) of the APMC, Talod dated 30th August, 1999, which is set aside by the Deputy Secretary (Appeals) by the impugned order.

5. Shri Dipan Desai, learned AGP is not in a position to controvert the same and even from the impugned order itself, it appears that even the petitioner was not joined as a party to the said Revision Application. It is not in dispute that by impugned judgment and order, the Deputy Secretary (Appeals) has quashed and set aside the resolution No.19(2) of the APMC, Talod dated 30th August, 1999 and the petitioner was the beneficiary of the said resolution. When any adverse order is passed having civil

consequences, a person against whom the order is passed or is affected is required to be given an opportunity of being heard.

Under the circumstances, the judgment and order passed by the Deputy Secretary (Appeals) is in breach of principle of natural justice and the same is required to be quashed and set aside.

6. For the reason as stated above, the petition succeeds. The judgment and order passed by the Deputy Secretary (Appeals), Agriculture and Cooperation Department dated 22-7-2004 in Revision Application No.91 of 2004 is hereby quashed and set aside and the matter is remanded to Revisional Authority for deciding the same afresh in accordance with law and on merits and after giving an opportunity to the petitioner of being heard.

7. Petitioner to make an appropriate application for joining as a party respondent in the said Revision Application as early as possible preferably, within a period of two weeks from the date of receipt of this order. On such application being made, the Deputy Secretary (Appeals) is directed to allow the said application and thereafter decide and dispose of the said Revision Application of remand in accordance with law and

on merits as early as possible preferably, within a period of three months from the date of receipt of this order.

8. It is, however, made clear that this court has not expressed any opinion on merits and it is because of the fact that the petitioner was not given an opportunity of being heard. It is for the Deputy Secretary (Appeals) to decide and dispose of the Revision Application in accordance with law and on merits. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.SHAH,J)

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